

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re A.S., a Person Coming Under the Juvenile Court
Law.

C094544

YOLO COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

(Super. Ct. No. JV2021562)

Plaintiff and Respondent,

v.

B.S.,

Defendant and Appellant.

B.S. (father) appeals from the findings and orders made by the juvenile court at the combined jurisdictional/dispositional hearing concerning the minor, A.S. Father contends the juvenile court erred in finding placement with him would be detrimental to

A.S. under Welfare and Institutions Code section 361.2.¹ We find no error and affirm the juvenile court's findings and orders.

FACTUAL AND PROCEDURAL BACKGROUND

A. Initial Detention

On March 24, 2021, A.S., then six years old, along with her two half siblings, were taken into custody by law enforcement when A.S.'s mother, A.T. (mother), and her boyfriend were found unresponsive and under the influence in their car, while the children were in their care.

On March 26, 2021, the Yolo County Health and Human Services Agency (Agency) filed a petition alleging failure to protect A.S. and her half siblings under section 300, subdivision (b)(1). The petition included an allegation that A.S. was at risk in the care of father due to his failure to protect her from the conduct of mother.

On March 25, 2021, an Agency social worker spoke with father. Father informed the Agency that A.S. resided with him full time for the previous few months and had only been visiting mother for the past few weeks. Father had a lengthy history of criminal arrests, charges, and convictions dating back to 1999, including possession, grand theft, reckless driving, driving on a suspended license, and felon in possession of firearms. Father also had a November 2020 arrest for pimping, which was dismissed for lack of sufficient evidence. At the detention hearing held on March 30, 2021, father was determined to be the presumed father. The juvenile court ordered the children detained from both parents at the initial detention hearing.

B. Jurisdiction and Disposition

On March 26, 2021, an Agency social worker met with mother at the Yolo County jail to discuss the allegations with her. At that time mother denied that A.S. was just

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

visiting her. She reported that A.S. had always lived with her but that father had taken A.S. without her permission.

On April 15, 2021, the maternal stepgrandmother was interviewed by the Agency and reported that A.S. had resided with her the majority of her life, but in July 2020 mother got mad at the maternal grandfather and picked A.S. up and gave her to father, even though father had not been very involved with A.S. The stepgrandmother further reported that father allowed A.S. to continue to have contact with her and when mother found out, mother decided to keep A.S.

Father was also interviewed and stated that A.S. lived with him and was only visiting mother for a few weeks. He denied any knowledge of mother's drug history, despite being together for three years, and denied any concerns with leaving A.S. with mother. He denied that there were any custody orders in place.

The jurisdiction report recommended that the court strike the section 300, subdivision (b) allegation regarding father and sustain the remaining allegations of the original petition.

The disposition report recommended that A.S. be declared a dependent of the juvenile court and that family reunification services be offered to mother and father. Though charges were not pursued, the Agency noted concerns about father's November 2020 arrest for pimping, while two minors were in his car. The Agency also noted father's girlfriend was pregnant with his child at the time of this arrest. Father's visits with A.S., however, were reported to be very positive, and the Agency recommended unsupervised visits for him.

The juvenile court set the matter for a contested jurisdiction and disposition hearing on June 3, 2021.

On June 2, 2021, prior to the contested jurisdiction and disposition hearing, the Agency filed an addendum report, which changed the recommendation to placing A.S. with her father under the Agency's and court supervision and with family maintenance

services. The addendum included the law enforcement report for father's November 2020 arrest for pimping. The report indicated that father's girlfriend communicated with an undercover police officer by text, sent photos, and arranged to meet him at a hotel. When she showed up at the hotel room, she was contacted by law enforcement and denied engaging in prostitution. She indicated that she was paid to go on dates with older men but did not have sex with them. Father's girlfriend was arrested for a violation of Penal Code section 647, subdivision (b), soliciting an act of prostitution. Father's girlfriend's criminal history showed additional prostitution-related arrests in 2014, 2019, and 2020. When she was arrested, she also had two outstanding no-bail warrants for her arrest, including one for loitering with intent to prostitute. The report also reflected that it was determined that father had dropped his girlfriend off at the hotel, and he had two children, ages four and six, in his car at the time. Father's girlfriend stated that one of the children was hers and one was the child of father. When the police officers approached father in his car, he attempted to back the car away, leading to a standoff with police and officers pointing their guns at father while the children were still in the car. Father was arrested for pimping, in violation of Penal Code section 266h.

At the contested jurisdiction and disposition hearing held on June 3, 2021, social worker Rosanna D'Amico, testified that father had a criminal history, including "a robbery and battery back in 1999, possession in 2007, grand theft in 2011, 2014 controlled substance, 2015 possession of a firearm, and then 2020 there was charges that were dismissed due to insufficient evidence." Regarding the charges in November 2020, which had been dismissed, she reported the same information that was in the police report. She further testified that both father and his girlfriend denied that she was engaging in prostitution at the time of the November 2020 arrest. Father's girlfriend did not have any history with child protective services and did not reside with father. Father had obtained housing for himself and A.S. through the United States Department of Housing and Urban Development (HUD) housing assistance program commonly known

as Section 8. Father was cooperative and respectful when D'Amico showed up unannounced to his home in May, and the home was clean and appropriate. The addendum report reflected that father's girlfriend was present in the home at the time of the unannounced visit. D'Amico testified that because father had obtained suitable housing and did not live with his girlfriend, there was a change in circumstances warranting placement with father. She acknowledged that bringing children to the hotel under the circumstances was high risk, and the child could be at risk from activities related to prostitution if she were returned to father's home. However, she testified that father could receive counseling and education as to how that would be dangerous for his child.

The Agency argued that there was not clear and convincing evidence of detriment.

Father requested placement as the noncustodial and nonoffending parent under section 361.2. Both A.S.'s counsel and mother objected to placement with father.

The juvenile court sustained the petition as amended. The court found that placement with father would be detrimental to A.S. and thus found by clear and convincing evidence that out-of-home placement was necessary and appropriate and set a six-month review hearing.

Father timely appealed.

DISCUSSION

Standard of Review

Father argues the evidence was insufficient to support a finding that placing A.S. in his custody would be detrimental to the child's physical and emotional well-being. We disagree.

"The rights of a noncustodial and nonoffending parent to custody of a dependent child are governed by section 361.2[, subdivision] (a)" (*In re C.M.* (2014) 232 Cal.App.4th 1394, 1401; see also *In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 301 [§ 361.2, subd. (a) applies even when noncustodial parent's conduct is a basis for

dependency jurisdiction].) The statute provides: “If a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a).) Section 361.2, subdivision (a) “evinces the legislative preference for placement with the noncustodial parent when safe for the child.” (*In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1262.)

In making a finding of detriment under section 361.2, subdivision (a), “the court weighs all relevant factors to determine if the child will suffer net harm.” (*In re A.C.* (2020) 54 Cal.App.5th 38, 43.) “To comport with due process, the detriment finding must be made under the clear and convincing evidence standard.” (*In re C.M., supra*, 232 Cal.App.4th at p. 1401.) Clear and convincing evidence requires “a high probability, such that the evidence is so clear as to leave no substantial doubt.” (*In re Patrick S., supra*, 218 Cal.App.4th at p. 1262.)

A juvenile court’s denial of placement under section 361.2 is reviewed to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings based on the clear and convincing evidence standard. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694-695.) We review the evidence in the light most favorable to the trial court’s findings, drawing every reasonable inference and resolving all conflicts in favor of the prevailing party. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

Analysis

“ ‘A parent’s right to care, custody and management of a child is a fundamental liberty interest protected by the federal Constitution that will not be disturbed except in

extreme cases where a parent acts in a manner incompatible with parenthood.’ ” (*In re Abram L.* (2013) 219 Cal.App.4th 452, 461.) A nonoffending parent has a constitutionally protected interest in assuming physical custody of his or her dependent child, which may not be disturbed “ ‘in the absence of clear and convincing evidence that the parent’s choices will be “detrimental to the safety, protection, or physical or emotional well-being of the child.” ’ ” (*Ibid.*)

It appears that the juvenile court relied on the facts of father’s prior arrest for pimping, and father’s denial or minimization of those facts in reaching its conclusion that placement of A.S. with her father would be detrimental. The facts of that event are concerning. It is clear from the law enforcement report that father’s girlfriend had arranged to engage in sexual acts with an undercover officer and father drove her and dropped her off at the hotel where father’s girlfriend agreed to meet the officer. Two minors were in the car with father, one was his girlfriend’s, and one was father’s. No one clarified whether father’s child in the car was the minor A.S., but based on her age, it appears it may have been. When law enforcement attempted to contact father, who was waiting in his car near the hotel, father started to back up away from the officers. The officers drew their weapons and aimed them at the vehicle until father agreed to exit the car.

Father claimed throughout the dependency proceedings that he did not know that his girlfriend was intending to meet someone at the hotel, rather he thought that she was getting a room for them. This despite the fact that when his girlfriend arrived, she apparently did not go into the hotel’s office, but rather walked directly into the undercover officer’s room. Additionally, when his girlfriend was arrested, she had no money or identification in her possession. Father also denied knowledge of his girlfriend’s prior history of prostitution-related arrests.

Evidence of father’s girlfriend’s engagement in prostitution was strong, father’s denial of it even stronger. Father’s failure to acknowledge his girlfriend’s engagement in

prostitution activity would not be so troubling had father at least acknowledged that the activity posed a significant risk of harm to the two minors who were in the car when father drove his girlfriend to the hotel, and who were in the car when law enforcement attempted to speak with father, and instead drew their firearms and aimed them at the vehicle the minors were in when father was not immediately compliant.

Further, D'Amico's opinion that placement with father would not be detrimental to A.S. relied heavily on the change in his housing circumstances and the fact his girlfriend did not live with him. The fact that father remained in a romantic relationship with his girlfriend, that she was pregnant with his child, and that she was present in his home during the May unannounced home visit, leads to the reasonable conclusion that he will continue to have considerable contact with her.

Accordingly, we conclude there is substantial evidence in the record to support the juvenile court's finding of detriment to the minor within the meaning of section 361.2.

DISPOSITION

The orders of the juvenile court are affirmed.

/s/
EARL, J.

We concur:

/s/
HOCH, Acting P. J.

/s/
KRAUSE, J.